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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re C.L., a Person Coming Under the
Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ANTHONY L.,

Defendant and Appellant.

B252521

(Los Angeles County
Super. Ct. No. CK99969)

APPEAL from orders of the Superior Court of Los Angeles County, Marilyn Martinez, Commissioner. Affirmed in part; dismissed in part.

Kimberly A. Knill, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Jessica S. Mitchell, Deputy County Counsel, for Plaintiff and Respondent.

Appellant Anthony L. (Father), father of C.L. (C), appeals the court's jurisdictional and dispositional orders. Father, a long-time drug abuser who had relapsed after treatment multiple times in the past, contends his five months of sobriety established that he was no longer a risk to his infant daughter. We conclude the court's findings were supported by substantial evidence and affirm the jurisdictional order. We dismiss the appeal of the dispositional order as moot.

FACTUAL AND PROCEDURAL BACKGROUND

A. Detention

The family came to the attention of the Department of Children and Family Services (DCFS) in June 2013, when C was born testing positive for opiates and methadone. Her doctors placed her in a neonatal intensive care unit, where she was initially unable to breath or eat on her own. She experienced severe jitteriness, shaking and extreme pain. Her medical problems were all related to her intra-uterine exposure to drugs; she had to be treated for heroin withdrawal before she could be released.¹

Interviewed by the caseworker, Mother admitted a 13-year history of drug use, and admitted using heroin during her pregnancy. In 2010, she had been arrested for possession. In the two years preceding DCFS's intervention, she had attended, but did not complete, several drug abuse treatment programs. She reported that although she was able to remain drug-free for brief periods, "she always relapse[d]." Father also admitted a long history of drug use, beginning when he was a teenager.² He admitted using heroin for three years. He, too, had attended multiple rehabilitation

¹ C was not discharged from the hospital for more than a month after her birth.

² At the time of the underlying proceedings, Father was 33.

programs, and had “always relapse[d].” Both claimed they had last used drugs in April 2013.

On June 3, 2013, the caseworker filed an application for authorization to remove C from her parents’ custody. The caseworker’s declaration stated that based on her years of experience investigating child abuse referrals, she believed the parents’ drug abuse placed C in danger. Although the parents denied current abuse and Father was participating in a treatment program, the fact that the parents had a history of relapsing after multiple rehabilitation attempts led the caseworker to conclude the child’s safety could not be assured. The court granted the application, and at the June 11 detention hearing, the court ordered C detained from her parents. After her release from the hospital, she was placed with her maternal grandmother.

B. Jurisdictional/Dispositional Findings

Interviewed in connection with the July 26, 2013 jurisdictional report, Mother and Father reported living at the paternal grandparents’ house, in a detached garage that had been converted into a room. Mother described having been enrolled in five treatment programs prior to her pregnancy. Although she had started a methadone program in February 2013, she admitted she continued to use heroin until at least April. Mother stated that her and Father’s addictions brought them together, that they used together, and that their relapses coincided. She acknowledged that the lifestyle they had been living was not conducive to raising children because when she used heroin, she became groggy, numb, and incoherent, and could easily fall asleep or become forgetful.

Father stated he had used multiple drugs since high school, including marijuana, cocaine, methamphetamine, and LSD. When he was 26, he was prescribed Oxycontin for pain after a car accident. He started “snorting and smoking it,” and “realized [he] had a drug problem [when he] had to start using it daily.” He

began using heroin in 2007 or 2008 because it was cheaper. Once he started heroin, “[his] addiction was straight heroin.” In 2009, he was convicted for driving under the influence. In 2011, he was convicted for possession of heroin. He stated that he attended and sometimes completed numerous treatment and detoxification programs beginning in 2008 or 2009, but would relapse within a brief period. He admitted he and Mother did not stop using heroin, even after discovering that Mother was pregnant. He stated he had stopped using heroin several months after entering the methadone program in February 2013, and was scheduled to complete the process of tapering off methadone in a month.

The maternal grandmother reported that Father and Mother met when Father dealt drugs to Mother and her ex-boyfriend. Prior to starting the relationship with Father, Mother had been a “functioning addict.” Afterward, she “lost her job” and “hit rock bottom.” The grandmother stated that since the detention, Mother and Father were visiting C everyday and were parenting her well.

The paternal grandmother stated that when Father and Mother were using drugs, they would stay in bed all morning. Father had lost his job due to his addiction. In the past, Father had relapsed because he thought he could continue to use drugs “recreationally.” Father was in treatment at the time of the interview and had “stayed clean now for a while.” The grandmother believed he was “on the path” due to his desire to regain custody of C. Recently, Father and Mother appeared more alert and participated more in everyday activities.

In view of the parents’ extensive drug use history and numerous failed efforts to treat their drug addition to heroin in the past, DCFS recommended that the court assert jurisdiction and provide reunification services.

A MAT (multi-disciplinary assessment team) assessment report was prepared following interviews of the pertinent parties conducted in July and August 2013. At the time, Father was enrolled in a probation-approved drug and alcohol program,

which provided methadone maintenance and monthly testing. Both parents were taking parenting classes. Neither parent was regularly employed, although Father was occasionally working on a contract basis. They were visiting C daily at the maternal grandmother's home, and assisting in her care. The MAT assessment reported that the parents had a healthy relationship and were supportive of one another.

At Father's request, the jurisdictional/dispositional hearing was put off from July 2013 to September 2013 for trial.³ Prior to the hearing, the court received a report that Mother and Father had drug tested negative five times between July 1 and August 26. The caseworker met with the parents at the end of July, and learned that Father had tapered off methadone. He and Mother were still participating in parenting classes. Both parents had recently become employed. Mother was receiving methadone treatment and weekly counseling, but was not in a drug abuse treatment program. The caseworker provided Mother referrals, but received no confirmation that she had enrolled in a treatment program. Mother expressed concern that Father had been weaned off methadone too soon at the encouragement of his parents who wanted him to regain custody of C. Mother said she herself was afraid to stop taking methadone. At the end of August, the caseworker attempted to set up another meeting with Mother and Father before the upcoming hearing. She called Mother and received no response, even after informing the maternal grandmother that it was necessary for Mother and Father to call and arrange a final interview.

At the September 2013 jurisdictional/dispositional hearing, Father's counsel asked that the jurisdictional allegations be dismissed based on Father's progress in

³ Mother conceded jurisdiction. The jurisdictional finding with respect to Mother stated that she had a "history of drug use," "used heroin and methadone during [her] pregnancy with [C]," and had a "positive toxicology screen for opiates and methadone at the child's birth." This behavior "endanger[ed] the child's physical health and safety and place[d] the child at risk of harm."

getting his life back together and the lack of any indication of current drug use. The minor's attorney acknowledged that there was no evidence of drug use since April 2013, but urged the court to make a jurisdictional finding that Father's history of drug use and frequent relapses presented a risk to C.

The court found true that Father had "a history of illicit drug use, including marijuana [and] heroin," and "a long history of relapsing after attending detox [and] drug rehab programs," and that Father's behavior "render[ed] [him] incapable of providing regular care for the child," "endanger[ed] the child's physical health and safety," and "placed the child at risk of harm." This finding supported jurisdiction under Welfare and Institutions Code section 300, subdivision (b).⁴ At the hearing, the court noted that Father had been clean for only a few months and had a pattern of "going to programs, trying to get clean and . . . being successful," only to relapse, and "d[id] not have a history of being able to stay clean." Father's history of "[b]eing clean for a little while, here and there," was insufficient to persuade the court that his "long history of use and relapse does not pose a risk to [C]."

With respect to disposition, Father's counsel argued that C be released to him with appropriate safeguards in place. The court found by "clear and convincing evidence" that "substantial danger exists to [C] and there is no reasonable means to protect her without now removing her from her parents['] custody." Although both parents had been "cooperative" and "participating in programs," they had not persuaded the court that "their commitment to the current programs [would be] long lasting, and that they [would] be able to sustain a sober lifestyle." The court's dispositional order required the order removing C from the custody of her parents to continue in force, but permitted the parents to have overnight monitored visits at the homes of the grandparents. The court ordered family reunification services for both

⁴ Undesignated statutory references are to the Welfare and Institutions Code.

parents, including, for father, a drug treatment program, weekly random drug testing, a 12-step program, parenting classes, and individual counseling.

DISCUSSION

A. Jurisdiction

Father contends the court erred in sustaining the jurisdictional allegations pertaining to him because past drug use alone cannot provide a basis for assertion of dependency jurisdiction. For the reasons discussed, we disagree.

Section 300, subdivision (b) permits the court to adjudge a child a dependent of the juvenile court where: “The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s . . . substance abuse.” A true finding under subdivision (b) requires proof of: “(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’ to the minor, or a ‘substantial risk’ of such harm or illness.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) “The third element ‘effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future’” (*In re James R.* (2009) 176 Cal.App.4th 129, 135, quoting *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396.) In other words, “[t]he basic question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm.” (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1022.)

On appeal from a jurisdictional order, “we must uphold the court’s findings unless, after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we

determine there is no substantial evidence to support the findings.” (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.)

The evidence presented supported the juvenile court’s jurisdictional finding. Father, now in his mid-30’s, had been using and abusing drugs since he was a teenager and had developed self-described “addictions” to Oxycontin and then to heroin. He reported trying to stop using drugs, but failing, even after participating in multiple drug detoxification and rehabilitation programs and discovering that Mother was pregnant. Assertion of jurisdiction is warranted where the child is “of such tender years that the absence of adequate supervision and care poses an inherent risk to [his or her] physical health and safety.” (*In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 824.) For such a child, “the finding of substance abuse is prima facie evidence of the inability of a parent or guardian to provide regular care resulting in a substantial risk of harm.” (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1219 (*Christopher R.*); accord, *In re Drake M.* (2012) 211 Cal.App.4th 754, 767 (*Drake M.*)). Father points out that the evidence was undisputed he had been drug-free -- save for the methadone permitted by his treatment program -- since April 2013 and contends the court was punishing him for “past misconduct.” The court was not obliged, however, to find that the danger of substance abuse and neglect had passed simply because Father had been heroin free for a period of five months and methadone free for less than two months. A brief period of sobriety does not overcome, as a matter of law, a finding of danger to a child demonstrated by a lengthy history of drug use and relapse. (See *In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1081 [given parents’ history of drug use, court properly refused to grant section 388 petition notwithstanding parents’ three-month old effort at rehabilitation].)

Father’s reliance on *In re Destiny S.* (2012) 210 Cal.App.4th 999 (*Destiny S.*) and *Drake M.*, *supra*, 211 Cal.App.4th 754, is misplaced. In *Destiny S.*, the child was 11 years old and well cared for. She had no behavioral issues and was attending

school regularly. The family home was “neat and clean” and stocked with food. The mother admitted occasional use of marijuana but her regular abuse of methamphetamines had occurred nine years earlier. (*Destiny S.*, *supra*, at pp. 1001, 1004.) In *Drake M.*, the child, although younger, was similarly well cared for and the family home was in good order. The father, although regularly using medical marijuana, was employed and took care of his family financially. (*Drake M.*, *supra*, at p. 768.) Here, Father did not dispute that drug use caused him to lose his job and remain unemployed for an extended period. The family was living in one room in a converted garage. Mother and the paternal grandmother described the effects of the drugs Father and Mother ingested, causing them to oversleep, and leaving them groggy, forgetful and unable to assist with household duties. Moreover, although Father cannot be held responsible for the choices Mother made while pregnant, no evidence indicated he discouraged her from using drugs during the pregnancy. Instead, he shared his drug supply and used heroin alongside her. This caused C enormous suffering after her birth. These factors distinguish the situations present in *Destiny S.* and *Drake M.* where the parents, despite occasional use of drugs, were fully functional, and the children were well cared for and/or old enough to care for themselves for occasional periods if the parent became mentally absent.

Father further contends that the jurisdictional finding should be reversed because the juvenile court failed to make a specific finding that he had a substance abuse problem as defined in the DSM-IV-TR (American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (4th rev. ed. 2000)) as required by *Drake M.* In that case, Division Three of this district found that a precise definition of substance abuse was required to avoid inconsistencies in the application of section 300, subdivision (b) to parents who used drugs or alcohol. The court held that “a finding of substance abuse for purposes of section 300, subdivision (b), must be based on evidence sufficient to (1) show that the parent or guardian at issue had

been diagnosed as having a current substance abuse problem by a medical professional or (2) establish that the parent or guardian at issue has a current substance abuse problem as defined in the DSM-IV-TR.” (*Drake M.*, *supra*, 211 Cal.App.4th at p. 766.) The court went on to quote the DSM-IV-TR definition of substance abuse, whose provisions included “[a] maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one (or more) of the following, occurring within a 12-month period: [¶] (1) recurrent substance use resulting in a failure to fulfill major role obligations at work”; “(2) recurrent substance use in situations in which it is physically hazardous (e.g., driving an automobile or operating a machine when impaired by substance use)”; “(3) recurrent substance-related legal problems (e.g., arrests for substance-related disorderly conduct)”; and “(4) continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance” (*Drake M.*, *supra*, at p. 766, quoting DSM-IV-TR, p. 199.)

Recently, in *Christopher R.*, Division Seven of this district rejected the conclusion that “only someone who has been diagnosed by a medical professional or who falls within one of the specific DSM-IV-TR categories can be found to be a current substance abuser.” (*Christopher R.*, *supra*, 225 Cal.App.4th at p. 1218.) The court held that the mother’s use of cocaine “while in the final stage of her pregnancy, combined with her admitted use of the drug in the past and her failure to consistently test or enroll in a drug abuse program, justified the juvenile court’s exercise of dependency jurisdiction over her children,” without regard to whether she fell within a specific DSM-IV-TR category or had been diagnosed as a substance abuser by a medical professional. (225 Cal.App.4th at pp. 1218-1219.) We need not resolve whether *Drake M.* was wrongly decided because here, the evidence was undisputed that within the preceding 12 months, Father was unable to “fulfill [employment] obligations” and “continued substance use despite having persistent or recurrent

social or interpersonal problems caused or exacerbated by the effects of the substance.”” Moreover, within the past several years, he used drugs in situations that were ““physically hazardous,”” as evidenced by his DUI, and suffered arrests for substance-related problems. Accordingly, even under *Drake M.*’s formulation, Father fits the definition of a substance abuser. This irrefutable fact provided ““prima facie evidence of [his] inability . . . to provide regular care resulting in a substantial risk of harm [to C]”” (*Christopher R., supra*, at p. 1219), and supported the court’s jurisdictional finding.

B. *Dispositional Order*

Father contends that the dispositional order was not supported by clear and convincing evidence that there was no reasonable means of protecting C short of depriving Father of custody. Respondent contends this portion of the appeal has become moot because, while the case was pending, the juvenile court returned C to the custody of Mother and Father.⁵ We agree and dismiss the appeal of the dispositional order.

Generally, “[w]hen no effective relief can be granted, an appeal is moot and will be dismissed.” (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315-1316.) However, “a reviewing court may exercise its inherent discretion to resolve an issue rendered moot by subsequent events” (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1404.) “We decide on a case-by-case basis whether subsequent events in a juvenile dependency matter make a case moot and whether our decision would affect the outcome in a subsequent proceeding.” (*Ibid.*) Father raises no argument in opposition to respondent’s mootness contention and we can identify no substantial

⁵ We granted respondent’s motion to take judicial notice of the juvenile court’s March 18, 2014 order placing C in the home of the parents.

parental interest that could be affected in the future by the now superseded dispositional order. Accordingly, the dispositional order is moot.

DISPOSITION

The jurisdictional order is affirmed. The appeal of the dispositional order is dismissed as moot.

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MANELLA, J.

We concur:

EPSTEIN, P.J.

WILLHITE, J.